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United States
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Circuit Court of Appeals
For the Ninth Circuit

HARRY CRAINE,

Appellant,

vs.

PACIFIC STEAMSHIP COMPANY,
a Corporation, and OLIVER
CHILLED PLOW WORKS, a
Corporation,

Appellee.

ABSTRACT OF RECORD

Upon Writ of Error to the United States District Court
of the District of Oregon

FILED

JAN 3 - 1922

F. D. MONCKTON,
CLERIC

WM. P. LORD,

ARTHUR I. MOULTON,

Attorneys for Plaintiff in Error
Portland, Oregon

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Upon Writ of Error to the United States District Court
of the District of Oregon

Names and Addresses of Attorneys of Record:

WM. P. LORD and ARTHUR I. MOULTON, 401-4 Board
of Trade Building, Portland, Oregon,

Proctors for Libelant-Appellant

OGLESBY YOUNG, Chamber of Commerce Building,
Portland, Oregon,

Proctor for Respondent-Appellee, Oliver
Chilled Plow Works, a Corporation.

IN THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE
NINTH CIRCUIT

Be it remembered, that on the 24th day of March, 1921, there was duly filed in the District Court of the United States for the District of Oregon, an

AMENDED COMPLAINT

in words and figures as follows, to-wit:

Now comes the plaintiff, with leave of Court first had and obtained, and brings this, his amended complaint, and for cause of action against the defendants, complains and alleges:

I

That the "City of Topeka" is an ocean going vessel, engaged in coast-wise trade, and on the 22nd day of September, 1920, was in the Port of Portland, berthed at Municipal Dock No. 2, taking on a cargo of miscellaneous freight, by the use of the ship's appliances commonly used in loading freight, and the services of the plaintiff and other longshoremen.

II

That the defendant Pacific Steamship Company is a corporation, duly organized and existing under and by virtue of the laws of the State of Maine, and engaged in the business of shipping and ocean transportation, and

on the 22nd day of September, 1920, said defendant was the owner of the SS. "City of Topeka," hereinbefore mentioned, and on said 22nd day of September, 1920, said steamship was engaged in the services of the defendant, Pacific Steamship Company.

III

That on or about the 22nd day of September, 1920, plaintiff was employed by the defendant, Pacific Steamship Company, to assist said defendant in loading and stowing freight from said wharf onto the deck and in the hold of said vessel.

IV

That the defendant Oliver Chilled Plow Works is a corporation duly organized and existing under and by virtue of the laws of the State of Indiana, engaged in the manufacture and sale of plows and other farm machinery, and transacts business within the City of Portland, Oregon, where said defendant operates and maintains a warehouse from which it assembles parts of the farm machinery manufactured by said defendant and packs and ships the same to its customers.

V

That on or about the said 22nd day of September, 1920, defendant Oliver Chilled Plow Works was shipping a certain potato digger manufactured by the said defendant to one of its customers by the defendant Pacific Steamship Company's said steamship "City of To-

peka," and had placed the said potato digger on the aforesaid wharf for shipment.

VI

That the aforesaid potato digger was constructed with knives and other sharp parts, which were concealed from view and were not observable; that in shipping said potato digger said defendant had negligently and carelessly failed to remove said knives and sharp parts thereof or to box said knives and sharp parts in, or to cover or shield the same so that they would not have exposed persons who were handling the same and carrying said digger into the hold of the ship to the danger of cutting their hands while carrying the same into the hold of said ship, all of which was well known to defendant by properly inspecting the said digger before directing the plaintiff and other longshoremen to carry said digger aboard said steamship, as plaintiff was required to do, as it was defendant's duty so to do.

VII

That it was the duty of the defendants to provide plaintiff with a safe place to work and to inform plaintiff of any hidden or latent dangers in connection with said work, but the said defendants, wholly disregarding their duty in the premises, and without any care or attention as to whether plaintiff would be injured thereby or not, negligently permitted said potato digger, hereinbefore described, to be loaded on said vessel by the plaintiff and other longshoremen carrying the same without

informing plaintiff that said knives and other sharp parts had not been covered, guarded or removed, or otherwise protected, as it was the duty of defendants to do, so as to prevent persons carrying said freight in the performance of their duties, from being cut by said knives and other sharp parts thereof, and by reason thereof, while plaintiff was engaged in carrying said potato digger across the floor of the hold of said vessel, as he was required to do, the fore and middle fingers of plaintiff's left hand became caught in the knives and other sharp parts of said potato digger, causing plaintiff to lose his said fingers, to his aggregate damage as hereinafter set forth, and all of which could have been prevented had the defendants exercised reasonable care in providing plaintiff with a safe place to work and informing plaintiff of hidden and concealed dangers, or by crating and packing said potato digger, or by guarding, covering or removing the knives and other sharp parts thereof.

VIII

That the plaintiff is a resident of the State of Oregon and a resident of a different state from each of the defendants.

IX

That the amount in controversy in this suit is in excess of the sum of Three Thousand (\$3,000.00) Dollars, exclusive of interest and costs.

X

That by reason of the negligence of defendant, as

hereinbefore described, plaintiff's left hand has become permanently impaired and mutilated and his earning capacity impaired, and he has suffered great physical pain and mental anguish, and loss of time to his damage in the sum of Ten Thousand (\$10,000.00) Dollars, and in addition thereto, plaintiff has incurred doctor and hospital bills in the sum of One Hundred Fifty (\$150.00) Dollars, in treating his said injuries, and will lose ten months' time from his work as a longshoreman, at which he earns \$200.00 per month, to his damage in the further sum of Two Thousand (\$2,000.00) Dollars.

Wherefore, plaintiff demands judgement against the defendants in the sum of Ten Thousand (\$10,000.-00) Dollars, and the further sum of One Hundred Fifty (\$150.00) Dollars, and the further sum of Two Thousand (\$2,000.00) Dollars, and his costs and disbursements herein.

WM. P. LORD,
Attorney for Plaintiff.

Endorsed:

U. S. District Court, District of Oregon.

Filed Mar. 24, 1921.

G. H. MARSH, Clerk.

(Verification omitted)

And thereafter, to-wit, on the 2nd day of April, 1921, there was duly filed in the District Court of the United States, in and for the District of Oregon, a

DEMURRER

in words and figures, as follows, to-wit:

(Title omitted)

Comes now the defendant Oliver Chilled Plow Works, a corporation, and demurs to the amended complaint herein upon the ground that the allegations thereof do not constitute a cause of action against said defendant.

OGLESBY YOUNG

Attorney for Defendant Oliver Chilled Plow Works, a corporation.

United States of America, State of Oregon, County of Multnomah, ss.

I, Oglesby Young, attorney for defendant Oliver Chilled Plow Works, a corporation, hereby certify that the above demurrer is, in my opinion, well taken in point of law, and not made for the purpose of delay.

OGLESBY YOUNG

POINTS TO BE PRESENTED UPON THE ARGUMENT

I

The potato digger in the handling of which plaintiff was injured is not, as a matter of law, such a dangerous instrument as would make this defendant liable to plaintiff for injuries received in its handling, this defendant not being master of plaintiff.

II

It appears upon the face of the complaint that any

hidden or latent danger in the handling of the machine could have been discovered by an inspection thereof, and that it was the duty of plaintiff's master, the defendant Pacific Steamship Company, to make such inspection. (Par.VI).

III

The alleged negligence of this defendant in delivering the machine with the latent dangers alleged does not appear in the complaint to be the proximate cause of the injury, the proximate cause of the injury being the command and direction given by the Steamship Company to the plaintiff, without warning him of the latent dangers of the machine. The Steamship Company, being chargeable with notice of the hidden dangers, and being master of the plaintiff, would have the duty of warning him, and such duty, as a matter of law, cannot be imposed upon this defendant. The allegation that it was the duty of both defendants to inform plaintiff of any latent dangers in connection with the work is a conclusion of law, and it cannot be considered in determining whether this defendant had such duty.

IV

There is a misjoinder of parties defendant, in that it does not appear that the injury was caused by the concurrent negligence of the defendants, or by any joint act of the defendants, because, as a matter of law, it was not the duty of this defendant to provide plaintiff with a safe place to work, or to inform plaintiff of any

hidden danger in connection with the work which danger could have been ascertained by inspection.

Acceptance of service omitted.

Endorsed:

U. S. District Court.

District of Oregon,

Filed April 2, 1921.

addenda p. 25.

G. H. MARSH, Clerk.

der taking argument under advisement

And afterwards, to-wit, on Monday, the 2nd day of May, 1921, the same being the Judicial day of the regular March term of said court; present the Honorable R. S. Bean, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

(Title omitted)

ORDER SUSTAINING DEMURRER

This cause was heard by the Court upon the demurrer of Oliver Chilled Plow Works to the complaint herein and was argued by Wm. P. Lord, of counsel for plaintiff, and ^{*Oliver Chilled Plow Works*} George A. Pipes, of counsel for defendant Oliver Chilled Plow Works.

It is ordered that said demurrer be and the same is hereby sustained.

Dated this 2nd day of May, 1921.

R. S. BEAN

District Judge.

Endorsed:

U. S. District Court,
District of Oregon,
Filed May 2, 1921.

G. H. MARSH, Clerk.

And afterwards, to-wit, on Monday, the ²³~~2nd~~ day of May, 1921, the same being the Judicial day of the regular March term of said court; present the Honorable R. S. Bean, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

Addenda. p. 25. (Title omitted)
ice of Application for Judgment
JUDGMENT ORDER

This cause coming on, on motion of Oglesby Young, attorney for defendant Oliver Chilled Plow Works, a corporation, for an order dismissing the complaint as to said defendant and for judgment for its costs and disbursements incurred herein, and the Court having on the 2nd day of May, 1921, made an order sustaining the demurrer interposed to the complaint by said defendant; and no application having been made to the Court for further time in which to plead on the part of the plaintiff

It is ordered and adjudged that the complaint herein as to the defendant Oliver Chilled Plow Works be and the same hereby is dismissed.

It is further ordered that the said defendant have

judgment against plaintiff for its costs and disbursements incurred herein.

Dated this 2nd day of May, 1921.

R. S. BEAN
District Judge.

Endorsed:

U. S. District Court,
District of Oregon.
Filed May ²³2, 1921.

G. H. MARSH, Clerk.

And afterwards, to-wit, on the 2nd day of November, 1921, there was duly filed in the District Court of the United States for the District of Oregon, a

PETITION FOR WRIT OF ERROR

in words and figures as follows, to-wit:

(Title omitted)

The plaintiff says that on the 2nd day of May, 1921, this court entered judgment herein in favor of the defendant Oliver Chilled Plow Works and against the plaintiff, dismissing plaintiff's cause of suit against said defendant with costs and disbursements in said action, in which judgment and proceedings had prior and subsequent thereto in this cause certain errors were committed, to the prejudice of plaintiff, all of which will more fully appear in detail from the assignment of error, which is filed with this petition.

Wherefore, Plaintiff prays that a writ of error may issue in plaintiff's behalf to the United States Circuit Court of Appeals for the Ninth Circuit, for the correction of error so complained of and that a transcript of the record and proceedings in this cause duly authenticated may be sent to said Circuit Court of Appeals.

WM. P. LORD,
ARTHUR I. MOULTON,
Attorneys for Plaintiff.

United States of America, District of Oregon, ss.

Due and legal service of the foregoing petition by copy admitted at Portland, Oregon, this 2nd day of November, 1921.

OGLESBY YOUNG

Attorney for defendant Oliver Chilled Plow Works.

And thereafter, to-wit on Tuesday, the 2nd day of November, 1921, the same being the Judicial day of the regular November term of said Court; present the Honorable Robert S. Bean, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

(Title omitted)

ORDER ALLOWING WRIT OF ERROR

On this 2nd day of November, 1921, the above named

plaintiff, by his attorneys, Wm. P. Lord and Arthur I. Moulton, presented to the Court a petition praying for the allowance of a writ of error intended to be urged by plaintiff, and praying also that the transcript of record upon the judgment herein so rendered on the 2nd day of May, 1921, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, presenting therewith assignments of errors, and also praying that an order may be made fixing the amount of an undertaking on writ of error, and for such other and further proceedings as may appear proper in the premises.

On consideration thereof the Court does hereby allow the writ of error and fixes the amount of said bond in the sum of Three Hundred Fifty (\$350.00) Dollars, to be conditioned that the plaintiff will prosecute said writ of error to the effect that he will answer all costs and damages, if he fails to make good his plea.

Dated this 2nd day of November, 1921.

R. S. BEAN

Judge.

Endorsed:

Filed November 2, 1921.

G. H. MARSH, Clerk.

And afterwards, to-wit, on the 2nd day of November, 1921, there was duly filed in the District Court of the United States for the District of Oregon, an

ASSIGNMENT OF ERRORS

in words and figures as follows, to-wit:

(Title omitted)

Plaintiff above named, in connection with his petition for writ of error in the above entitled action, suggests that there was error on the part of the District Court of the United States for the District of Oregon, in regard to the matters and things hereinafter set forth, and plaintiff makes assignment of errors, as follows:

1. The Court erred in sustaining the motion for default judgment filed by the Oliver Chilled Plow Works.

2. The Court erred in sustaining the demurrer of the Oliver Chilled Plow Works to plaintiff's amended complaint.

3. The Court erred in entering judgment in this cause in favor of the defendant Oliver Chilled Plow Works and against the plaintiff.

Each of the foregoing assignments of error is based upon the grounds and for the reason that the same is contrary to law and the decision of the Courts, and that plaintiff's amended complaint as to the Oliver Chilled Plow Works states a cause of action against said defendant.

Wherefore, plaintiff prays that the judgment of the District Court of the United States for the District

of Oregon in the above entitled cause may be reversed and that such directions may be given that full force and efficiency may inure to plaintiff by reason of the facts set out in his amended complaint filed in this cause.

WM. P. LORD,
and
ARTHUR I. MOULTON,
Attorneys for Plaintiff.

United States of America, District of Oregon, ss.

Due and legal service of the foregoing assignment of errors hereby admitted this 2nd day of November, 1921.

OGLESBY YOUNG

Attorney for defendant Oliver Chilled Plow Works.
Endorsed:

Filed November 2nd, 1921.

G. H. MARSH, Clerk.

And thereafter, to-wit, on the 2nd day of November, 1921, there was duly filed in the District Court of the United States for the District of Oregon a

CITATION ON WRIT OF ERROR

in words and figures as follows, to-wit:

United States of America, District of Oregon, ss.

To Oliver Chilled Plow Works, a corporation,
Greeting:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States for the District of Oregon, wherein Harry Craine is plaintiff and Pacific Steamship Company, a corporation and Oliver Chilled Plow Works, a corporation, are defendants and Harry Craine is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgement in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said District, this 2nd day of November, in the year of our Lord, one thousand, nine hundred and twenty-one.

R. S. BEAN

Judge.

Due and legal service hereby admitted this 2nd day of November, 1921.

OGLESBY YOUNG

Attorney for defendant.

Endorsed:

Filed November 21, 1921.

G. H. MARSH, Clerk.

And afterwards, to-wit, on the 2nd day of November,

1921, there was duly filed in the District Court of the United States for the District of Oregon, an

UNDERTAKING ON WRIT OF ERROR

in words and figures as follows, to-wit:

(Title omitted)

Know all men by these presents, That I, Harry Craine, and Weibca C. Lord, a free holder within the Counties of Marion and Multnomah, Oregon, are held and firmly bound unto the above named defendant Oliver Chilled Plow Works, in the sum of Three Hundred Fifty (\$350.00) Dollars, for the payment whereof well and truly to be made, said plaintiff above named and said Weibca C. Lord, bind themselves, their heirs, executors, administrators and assigns, jointly and severally by these presents.

Whereas at a term of the District Court of the United States for the District of Oregon in an action pending in said Court between the above named plaintiff and defendant a judgment was rendered in favor of said defendant Oliver Chilled Plow Works, and the said plaintiff has obtained a writ of error and filed a copy thereof in the Clerk's office of said Court, to enforce judgment in said action a citation directed to the said defendant admonishing it to be and appear before the next session of the United States Circuit Court of Appeals for the Ninth Circuit.

Now, therefore, the conditions of the above obliga-

tion are such that, if the plaintiff above named shall prosecute said writ of error to effect and answer all damages and costs if he fails to make good his appeal, then the obligation above is void, otherwise the same shall be and remain in full force and virtue.

In witness whereof, the parties have hereunto set their hands and notarial seals this 2nd day of November, 1921.

HARRY CRAINE

By WM. P. LORD, his attorney.

(SEAL)

WIEBCA C. LORD

(SEAL)

Executed in the Presence of Us:

R. M. DEERY,

WM. P. LORD

United States of America, District of Oregon, ss.

I, Weibca C. Lord, being first duly sworn, depose and say that I am the surety on the within undertaking and that I am not a counsellor or attorney at law, sheriff, clerk or other officer of any Court; that I am worth the sum of One Thousand (\$1,000.00) Dollars, over and above all property exempt from execution.

WEIBCA C. LORD

(SEAL)

Subscribed and sworn to before me this 2nd day of November, 1921.

WM. P. LORD,
Notary Public for Oregon.

On good cause shown the foregoing undertaking is approved.

Dated this 2nd day of November, 1921.

R. S. BEAN
District Judge.

Endorsed:

Filed November 2, 1921.

G. H. MARSH, Clerk.

And thereafter, to-wit, on the day of December, 1921, there was duly filed in the District Court of the United States for the District of Oregon, a

STIPULATION

in words and figures as follows, to-wit:

(Title omitted)

It is hereby stipulated and agreed by and between the parties above named in the above entitled suit, through their respective attorneys, that the printed transcript of record in the above entitled cause, as printed by the complainant and tendered to the clerk for his certificate, is a true transcript of the record in the

cause, and that the clerk shall certify the said printed transcript in accordance with this stipulation without comparison with the original record.

Dated this day of, 1921.

WM. P. LORD

Attorney for Plaintiff.

OGLESBY YOUNG

Attorney for defendant, Oliver Chilled Plow
Works, a corporation.

Note: (Orders extending time not included in transcript).

United States of America, District of Oregon, ss.

I, G. H. Marsh, clerk of the District Court of the United States, District of Oregon, do hereby certify that the foregoing printed record was tendered to me as Clerk, for certification as a true transcript of the record in the case of Harry Craine vs. Pacific Steamship Company, a corporation, and Oliver Chilled Plow Works, a corporation, and I hereby certify that the foregoing printed Transcript of Record is in accordance with the stipulation of the parties herein.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Portland, this 24th day of December, 1921.

G. H. MARSH,

Clerk of the District Court of the United States for the District of Oregon.

ADDENDA

And afterwards, to-wit: On Monday, the 25th day of April 1921, the same being the Judicial day of the regular term of said Court; Present, the Honorable R. S. Bean, United States, District Judge, presiding. The following proceedings were had in said cause, to-wit:

(Title Omitted)

Now at this day, this cause comes on to be argued upon the demurrer of the Oliver Chilled Plow Works, to the complaint herein plaintiff appearing by Mr. Wm. P. Lord, of counsel, and defendant Oliver Chilled Plow Works appearing by Mr. Oglesby Young and Mr. George A. Pipes, of counsel, and the Court having heard arguments will advise thereof.

And thereafter, to-wit: On the 17th day of May, 1921 there was duly filed in the District Court of the United States in and for the District of Oregon, a notice in words and figures as follows, to-wit:

(Title Omitted)

To Harry Craine, the above named plaintiff and to Wm. P. Lord, your attorney:

You will please take notice that the above named defendant, Oliver Chilled Plow Works, will, on Monday the 23rd day of May, 1921, at the hour of 10 o'clock

A. M., or as soon thereafter as counsel can be heard, apply to the court for an order dismissing the complaint in the above entitled cause as to the said defendant Oliver Chilled Plow Works; and for judgment for costs and disbursements incurred by said defendant in this action; on the following grounds, to-wit:

That on the 2nd day of May, 1921, the Court made and entered an order in the above entitled cause sustaining a demurrer interposed to the complaint by said defendant and you have not further pleaded or appeared in said cause.

OGLESBY YOUNG

Attorney for defendant,
Oliver Chilled Plow Works.

Acceptance of service admitted.

W. P. LORD.